

**AN ORDINANCE
BY CITY UTILITIES COMMITTEE**

07-~~0~~-2160

AN ORDINANCE TO AUTHORIZE THE ACQUISITION OF THREE (3) PROPERTIES, PURSUANT TO THE CITY'S PARTICIPATION IN THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) MITIGATION ASSISTANCE PROGRAM ("FEMA GRANT"); AUTHORIZING THE MAYOR TO ENTER INTO A COST PARTICIPATION AGREEMENT WITH PROPERTY OWNERS AND OTHER APPROPRIATE DOCUMENTS FOR THE ACQUISITION OF THE PROPERTIES INCLUDED IN THE FEMA GRANT PROGRAM; TO AUTHORIZE RECEIPT OF FUNDS FROM PARTICIPATING PROPERTY OWNERS AND FEMA TO OFFSET ANY ACQUISITION COSTS IN ACCORDANCE WITH THE FEMA GRANT; TO WAIVE PORTIONS OF ARTICLE X OF THE PROCUREMENT AND REAL ESTATE CODE; TO AUTHORIZE THE CITY ATTORNEY TO USE THE ASSISTANCE OF OUTSIDE COUNSEL TO EFFECTUATE THE ACQUISITION; TO AUTHORIZE THE CHIEF PROCUREMENT OFFICER TO OBTAIN TITLE WORK, SURVEYS, ENVIRONMENTAL TESTS, APPRAISALS AND OTHER APPROPRIATE DUE DILIGENCE ITEMS TO EFFECTUATE THE ACQUISITION OF THE PROPERTIES; TO CHARGE AND PAY FOR ALL ACQUISITION COSTS FROM FUND ACCOUNT AND CENTER NUMBER 1C51 (CAPITAL FINANCE FUND) 574001 (FACILITIES OTHER THAN BUILDINGS) Q11P1112B6F0 (NANCY, UTOY, AND PEACHTREE CREEK HOMES ACQUISITIONS); AND FOR OTHER PURPOSES.

WHEREAS, in March 2005, the City of Atlanta submitted a Subgrant Project Application to the FEMA Mitigation Assistance Program ("FEMA Grant") for the acquisition of three (3) properties along the Nance, Utoy and Peachtree Creeks that are located in the floodplain and subject to material losses due to repetitive flooding ("Properties"); and

WHEREAS, the Department of Watershed Management received notification that a federal grant, PDMC PJ-2005-09, was awarded from FEMA to acquire the three (3) applicant Properties; and

WHEREAS, pursuant to Resolution No. 07-R-1247, adopted on June 18, 2007 and approved by the Mayor on June 25, 2007, the City was authorized to participate in the FEMA Grant; and

WHEREAS, the City's participation in the FEMA Grant requires the City to acquire the Properties and perform all necessary due diligence to effectuate the acquisitions at the City's cost and then be reimbursed for all the acquisition costs from FEMA, which covers 75% of the initial estimated costs for the acquisitions, being One Million Seventy Six Thousand Seven Hundred Seventy-Two Dollars and No/100 (\$1,076,772.00) for the acquisitions (the "FEMA Contribution") and the Property owner, who is responsible for all costs exceeding the FEMA Contribution; and

WHEREAS, it is necessary and appropriate to enter into cost participation agreements with the affected Property owners to ensure that affected Property owners meet their financial obligations to pay for their respective share of the acquisition of the Properties, including due diligence items and closing costs, pursuant to the FEMA Grant; and

WHEREAS, property owners have agreed to sell their properties to the City together with the entire property-owners' right, title, and interest in all fixtures buildings, and improvements located on the above described real property, and under any easement or servitude for the benefit of the property owners, free an clear of all liens, encumbrances, reservations, exceptions and modifications; and

WHEREAS, the Commissioner of the Department of Watershed Management recommends that the City acquire the Properties in accordance with the FEMA Grant requirements and regulations for the benefit of the respective Property owners and the public welfare in general to mitigate the negative impacts of repetitive flooding to the Properties and the surrounding watershed; and

WHEREAS, participation in the FEMA Grant contemplates that the acquisition of the Properties be effectuated pursuant to a strict time frame and through a process consistent with the procedures of the FEMA Grant, which necessitates waiving portions of the Real Estate Code, Article X; and

WHEREAS, it is in the City's best interest to allow the Mayor or her designee the authority to enter into a cost participation agreement with the property owners to acquire the necessary property interests as approved under the Program; and

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:

Section 1. The Mayor is hereby authorized to enter into and execute a cost participation agreement with affected Property owners receiving FEMA grant Assistance from the FEMA Grant for the acquisition of the three (3) Properties participating in the FEMA Grant and is further authorized to enter into and execute all other appropriate documentation necessary to effectuate the acquisition of the Properties in accordance with the FEMA Grant.

Section 2. The Mayor is further authorized to accept deeds to transfer title of the Properties to the City in appropriate form, as approved by the City Attorney.

Section 3. The Chief Procurement Officer is authorized to obtain title reports, title insurance, appraisals, environmental studies, survey and all other appropriate items necessary to effectuate the acquisition of the Properties and to ensure that the City acquires good title to the Properties, free and clear of all encumbrances ("Due Diligence Items").

Section 4. The City Attorney is authorized to utilize outside counsel to effectuate the acquisition of the Properties; is authorized to prepare and approve all necessary and appropriate forms to effectuate the acquisition of the Properties; and is authorized to monitor and supervise the closing transactions with the property owners with the assistance of the City's real estate acquisition consultant.

Section 5. All costs associated with the acquisition of the Properties, including without limitation all Due Diligence Items and closing costs associated with the acquisition of the Properties shall be paid from Fund Account Center Number 1C51 (Capital Finance Fund) 574001 (Facilities Other Than Buildings) Q11P1112B6F0 (Nancy, Utoy, And Peachtree Creek Homes Acquisitions) ("Acquisition Account"); and all reimbursements from the affected Property owners and FEMA shall be deposited into the acquisition account or otherwise accounted for through the closing of the acquisition of the Properties.

Section 6. The Commissioner of the Department of Watershed Management is authorized to prepare and submit on behalf of the City all documentation, information or other items necessary to participate in the FEMA Grant in accordance with the requirements of the FEMA Grant.

Section 7. Article X of the Procurement and Real Estate Code is hereby waived to effectuate the acquisition of the Properties in conjunction with the City's participation in the FEMA Grant.